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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1960.

No. 359.

UNITED MINE-WORKERS OF AMERICA, and UNITED MINE WORKERS OF AMERICA, DISTRICT 19,
Petitioners,

vs.

OSBORNE MINING COMPANY, INC.,
Respondent.

RESPONDENT'S BRIEF

In Reply to Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

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RESPONDENT'S BRIEF

In Reply to Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

STATEMENT OF THE CASE.

This case is much like United Mine Workers of America v. Meadow Creek Coal Company, 263 Fed. 2d 52 (Sixth Cir. 1959), cert. denied 359 U. S. 1013 (1959).

The Court of Appeals recited in its opinion (Petitioners' Appendix II, 97):

> "The facts of this case as found by the District Judge, present a frightening picture of violence and intimidation."

A reading of the findings of the District Court (Petitioners' Appendix I), demonstrates that this is a fair summation.

Respondent operated a strip mining business in coal fields in Whitley County, Kentucky, which county lies immediately north of Jellico, Tennessee. It subleased part of the lands, which respondent held under long-term leases, to sublessees who operated small drift mines in the seams of coal which were exposed by the stripping operations of the respondent. These sublessees hired their own employees. As stated by petitioners, there was no requirement that these sublessees sell their coal to the respondent. However, respondent offered the best market for the coal mined from these small mines and the coal from these mines was customarily sold to respondent (R. II 1149).

The coal mined by respondent's stripping operation was hauled by truck from the strip pits to respondent's railroad loading ramp in Jellico, Tennessee. This hauling was done by a number of trucks owned by various individuals other than the respondent, and for this service the truck owners were compensated by the payment of a certain amount for each ton of coal hauled. The truck owners employed and paid their own drivers to drive these trucks. The sublessees operating the small mines in some cases owned their own trucks, which they used to haul the coal into Jellico to the respondent's tipple, and in some cases they contracted for the use of trucks owned by others, and these other truck owners would employ their own drivers if they did not drive the trucks themselves.

There were many trucks driven by employees of truck owners who thus contracted for the use of their trucks in the hauling of coal from Osborne's stripping pit or from the sublessee mines. Many of these truck driver employees were driven from their jobs and quit the hauling of coal permanently by reason of the violent activities engaged in by the petitioners and many of the employees working in the sublessee mines likewise quit their jobs permanently because of the violence committed by the petitioners (R. I. 269, 275, 512-513, 524; R. II. 738, 745, 747, 754, 756, 761, 773, 1024-1025).

Petitioners find nothing to criticize with respect to the wages paid by respondent to its own employees who were, in large part, highly skilled operators of heavy earth-moving and coal-stripping equipment. But petitioners seek to belittle the wages paid by the sublessee coal mine operators to their employees (page 8 of Petition) and petitioners refer to a finding of the District Court as to the smallness of these wages.

Petitioners have dealt with this subject during the trial, in their argument in the Court of Appeals, and in their brief before this Court, but have never stated its relevance to any issue in this case. It appears that the only purpose is to prejudice the court against the respondent, a respectable coal company, and we think it in order to prevent any such result by discussion of the facts pertaining to this particular matter.

Petitioners put on two witnesses who operated separate sublessee mines and who testified without any records whatsoever at hand as to the amount realized from the mining and sale of the coal to respondent. The statements of these witnesses concerning the amount they thus realized was refuted categorically in respondent's rebuttal by checks issued by the respondent which showed the amount realized by these two small mines was considerably in

excess of that insinuated by these witnesses and was above that needed to pay the minimum wage required by the law. (R. III 1756-1760).

The respondent further proved that the Wage and Hour Division of the Department of Labor conducted a thorough investigation of the small mines of the sublessees for a period of some three or four months with respect to violations of the Walsh-Healey minimum wage and violations of the Fair Labor Standards Act. The result of this long investigation was a finding that these small mines were indebted to their employees in the amount of $1,330.00 under the Walsh-Healey minimum wage and nothing under Fair Labor Standards Act. Considering the fact that the Walsh-Healey minimum wage in the bituminous coal industry is more than twice that of any other industry, this is a very small sum considering the number of mines in operation and the number of employees involved (R. II 1149-1150, 1145-1146).

The total amount received by the workers in the sublessee mines depended upon the constancy of the operation. And so the amount of the income of these laborers was, throughout the period of the operation of this respondent, made less by the continued harrassment of the gangs of the petitioner and the dread and fear which they engendered. The character of equipment used can be traced to the same cause, for these were men without initial capital and expected to install improvements as they progressed, but of this they were deprived by the conduct of petitioners. Petitioners now seek to take advantage of the condition which this conduct brought about. It is stated in Petitioners' statement of the case that the sublessees produced only 3.9 tons per man per day. The State Mining Inspector for the State of Kentucky visited these mines and found them frequently not in operation (R. III 1737-1739). He testified that the state

figures from which petitioners drew their figure of 3.9 tons mined per man per day was based upon the maximum number of employees working full time. This mine inspector testified that, if the men actually worked full time, they would normally produce 7½ tons of coal per man per day (R. III 1740). So it is that the Petitioners seek to take advantage of their own misconduct in driving these laborers away from the mines by placing the blame of their claimed small total income upon respondent.

The three questions presented in the petition for certiorari are mixed questions of law and fact and, to avoid repetition, other factual matters relating to these three questions will be discussed in the following portions of the brief which are directed to the questions presented.

ARGUMENT.

I. The Truck Owners and the Sublessee Mine Operators Were Independent Contractors and Neutral Employers.—

As stated above in the statement of the case, there were numerous drivers employed by truck owners who hauled coal from respondent's strip pits and from the sublessee mines into Jellico and many of these drivers quit work by reason of the violence perpetrated by the petitioners. The findings of the District Court 48, 56, 57, 58, 59, 60, 61, 62, 64, 70, 76, 105, 106, 110, 111 show that the violence and threats of violence fell heaviest on the truck drivers.

The petitioners say that these employees were employed by various individuals who cannot be classified as "neutral" employers within the meaning of the cases which have dealt with secondary boycotts under Section 303 of the Taft-Hartley Act.

A. Respondent Had No Control Over the Secondary Employees.—

The truck owners paid their own expenses (A. I. 289, 350, 378, 405, 473, 507, 571; A. II. 764, 994). They maintained their trucks at a garage with which respondent had no connection (A. I. 575; A. II. 1023). It was at this garage that various acts of intimidation perpetrated by the petitioners occurred. The truck owners hired and paid their own employees (A. I. 264, 367, 368, 507, 522, 723, 571; A. II. 752, 764, 994) who were under no control of the respondent as found by the District Court in Findings numbers 25 and 108. Respondent left it up to each truck owner as to whether his truck would be used in the hauling on a particular day (A. I. 367, 379, 473, 523, 571; A. II. 994, 1026). There was no meddling or interference

by the respondent with the employment relationship between the drivers and the truck owners, or with respect to the manner in which the trucks would be driven or maintained. In fact, there is absolutely no proof in the record of any control exercised by the respondent over the truck driver employees.

B. **Teamsters v. N. L. R. B., 266 F. (2), 675, Is Distinguishable.—**

As in the Court of Appeals, petitioners rely on the case of Local 24, International Brotherhood of Teamsters v. NLRB, 266 Fed. 2d 675 (C. A. D. C. 1959). The Court of Appeals adequately and properly distinguished the last mentioned case (A. 105-106) pointing out that in the Teamsters Case the truck owners (lessors) were not actually the employers because the so-called employees of the truck owners were subject to a multiplicity of strands of control retained and exercised over the truck drivers by the transportation company (lessee). The Teamster case opinion shows that the reasoning of the Court was that there were so many strands of control exercised by the lessee over these drivers that there was no distinguishing characteristic separating the lessee's own employees from the truck drivers. This opinion deals, for several pages, with the great number of controls which the lessee exercised over these truck drivers. These strands of control covered the matters of hiring and firing of the drivers, their training and method of driving, and even the maintenance of the trucks. Under all legal conceptions of independent contractors, the situation that existed in the Teamsters case eliminated the truck owners from the classification of independent contractor.

Here the District Court expressly found in Findings Nos. 25 and 108 that the drivers were not controlled by respondent. These Findings were not even challenged in

the Court of Appeals, and that Court, as petitioners recognize in their petition here, also concluded that there is no control. The presence or absence of the factual strands of control is a factual question; that question has been settled by concurrent findings of both lower courts, and respondent submits that the Findings should be respected here. (Allen v. Trust Company of Georgia, 326 U. S. 630.)

C. Secondary Employees Were Not an "Integral Part" of Respondent's Operations.—

Petitioners turn to the unsupported argument that the fact that respondent and the truck drivers both secured benefits from the work afforded by respondent and performed by the truck drivers is sufficient to make the drivers an "integral part" of respondent's operations and that for this reason alone the independent contractor relationship must be ignored. As the Court of Appeals said (A. 105), the truck drivers did not haul exclusively for respondent but the truck owners used their trucks and drivers on other work. Petitioners place prime significance on the fact that some of the drivers hauled slate for roads over which the trucks hauled coal. Petitioners say that the truck owners were not paid for this work (Petition, page 9), but the proof brought out by petitioners themselves at the trial was that the truck owners were paid for this work and, in addition, trucks which never hauled coal were contracted for this work also (R. II, 1265-1266).

The only other factual matter which the petitioners bring forward to support their contention of the truck drivers being an "integral part" of respondent's operations is that respondent made payment of bonuses to the truck drivers hired by the truck owners, just as it paid bonuses to its own employees. These were payments which were made voluntarily by the respondent when it had a profitable year (R. II, 1223, 1224), and not by

reason of any employment contract between the respondent and the truck driver. We submit that this benevolent attitude of the respondent is just as much outside the scope of the issues in this case as is the petitioner's attempt to belittle respondent with respect to the wages paid to the sublessee mine employees.

D. Petitioners' Theory Is Contrary to the Statute.—

The theory advanced by petitioners under this question ignores the statutory law which was expressly designed to avoid the result sought by the petitioner. This question was argued out thoroughtly in the District Court, and the District Court recited in its Conclusions of Law (A. 89-90):

> "The truck owners and sub-lessee mine operators who employed the secondary employees were neutral employers and not allies. The truck haulers and sublessees were independent contractors and inducement or encouragement for concerted action against their employees was a secondary boycott. See 29 U. S. C. A., Section 152 (3), for definition of the term 'employee' which provides that an employee shall not include independent contractors. See House Report on Education and Labor to 80th Congress, 1st Session, which deals with independent contractors. House Reports, 80th Congress, 1st Session, Miscellaneous, Vol. 2, p. 18.
>
> "Prior to the amendment the National Labor Relations Board had held that truck haulers who hauled coal exclusively for one employer was considered an employee of that employer. See Matter of A. N. Green, 49 NLRB 146. Since the amendment the Board has held uniformly that persons who own trucks who haul exclusively for one employer but who hire and fire their own employees are considered independent contractors, thus their employees are considered see-

ondary employees under the Taft-Hartley Act. Robert F. Dwyer et al., dba Clackamas Logging Co., and Guy Keller, Freel C. Zink, an individual, Local 5-40, International Woodworkers of America, CIO, 113 NLRB No. 27, Case No. 36-RD-81, 7-21-55 (this case involved a truck hauler of logs); Roy O. Martin Lumber Co., Inc., International Woodworkers of America, CIO, 83 NLRB No. 107, Case No. 15-RC-79, 5-18-49; and Local No. 20, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL-CIO) et al., and National Cement Products Co. of Toledo, Ohio, 115 NLRB No. 296, Case No. 8(CA)-37, 5-10-56 (this case involved a truck hauler of blocks)." (Conclusions of Law (6)).

The House Report on Education and Labor to the 80th Congress, 1st Session, referred to in the foregoing conclusion of the District Court reads as follows:

> "An 'employee', according to all standard dictionaries, according to the law as the courts have stated it, and according to the understanding of almost everyone, with the exception of members of the National Labor Relations Board, means someone who works for another for hire. But in the case of National Labor Relations Board v. Hearst Publications, Inc. (322 U. S. 111 (1944)), the Board expanded the definition of the term 'employee' beyond anything that it ever had included before, and the Supreme Court, relying upon the theoretic 'expertness' of the Board, upheld the Board. In this case the Board held independent merchants who bought newspapers from the publisher and hired people to sell them to be 'employees'. The people the merchants hired to sell the papers were 'employees' of the merchants, but holding the merchants to be 'employees' of the publisher of the papers was most far reaching. It

must be presumed that when Congress passed the Labor Act, it intended words it used to have the meanings that they had when Congress passed the act, not new meanings that, 9 years later, the Labor Board might think up. In the law, there always has been a difference, and a big difference, between 'employees' and 'independent contractors'. 'Employees' work for wages or salaries under direct supervision. 'Independent contractors' undertake to do a job for a price, decide how the work will be done, usually hire others to do the work, and depend for their income not upon wages, but upon the difference between what they pay for goods, materials, and labor and what they receive for the end result, that is, upon profits. It is inconceivable that Congress, when it passed the act, authorized the Board to give to every word in the act whatever meaning it wished. On the contrary, Congress intended then, and it intends now, that the Board give to words not far-fetched meanings but ordinary meanings. To correct what the Board has done, and what the Supreme Court, putting misplaced reliance upon the Board's expertness, has approved, the bill excludes 'independent contractors' from the definition of 'employee.'"

What we have said above applies equally to the relationship between respondent and the employees of the sublessee mine operators, as to which employees the District Court likewise found in Findings 25 and 108 the respondent exercised no control.

Accordingly, under this question, there is nothing in the Court of Appeals' opinion except a following of the law clearly expressed by Congress. There is no conflict between the Teamsters case and the decision of the Court of Appeals. Both cases are clearly right in applying the ordinary rules of independent contractor law.

We emphasize that even if this Court were to conclude that the concurrent findings of both lower Courts were in error, and to hold that the truckers were not independent contractors, there would still remain here a substantial federal claim under the federal statute, properly and in good faith alleged by respondent in the original complaint; the case would therefore still be an appropriate situation for the application of the pendent or ancillary jurisdiction doctrine, which petitioners challenge in their second question and to which we next reply.

II. The District Court and Court of Appeals Properly Applied the Doctrine of Pendent Jurisdiction.

A. The Courts Below Correctly Followed U. M. W. v. Meadow Creek Coal Co., 263 F. (2) 52, Cert. Den. 359 U. S. 1013.

With respect to the second question raised by the petition dealing with the application of the doctrine of pendent or ancillary jurisdiction by the District Court, sustained by the Court of Appeals, the two Courts below followed the decision in United Mine Workers of America v. Meadow Creek Coal Company, 263 Fed. 2d 52 (Sixth Cir., 1959), cert. denied 359 U. S. 1013 (1959).

The District Court found in Findings 109 and 110:

> (109) "The acts of violence and intimidation were intended to, and did, create a reign of terror in the Jellico area in order to promote the International's organizing campaign. Said acts and resulting reign of terror were intended to, and did, induce and encourage the employees of employers working for persons other than Osborne Mining Company both in mining and hauling of coal to the Osborne tipple to

engage in a concerted refusal in the course of their employment to mine and haul coal to said company and the objective thereof was to force Osborne Mining Company to bargain with the defendant International as the representative of its employees without said International having been certified as the bargaining representative of said employees.

(110) "Osborne Mining Company suffered substantial injuries as a result of said inducement and encouragement, but that part of their total injuries suffered caused by said inducement and encouragement cannot be separated from that part of the total injuries caused by primary acts of the defendants directly against Osborne Mining Company's own officials and employees."

The District Court made Conclusions of Law, 13, as follows:

"The material facts which support the Osborne Mining Company's secondary boycott action under 29 U. S. C. A. 187, also support its action under the common law.

"The secondary boycott claim and the common law claim based on the unlawful conspiracy are not separate causes of action but are simply different grounds to support a single cause of action, the cause of action accrues by reason of International's violation of the mining company's right to be free from wrongful interference in its business.

"The Court has jurisdiction of the secondary boycott claim based on the federal law and also the claim of unlawful conspiracy to injure the Osborne Mining Company's business under the doctrine of Hurn v. Oursler, 289 U. S. 238; UMW of A v. Meadow Creek Coal Co., Inc., supra, and United Construction Workers v. Laburnum Construction Corp., supra."

The Court of Appeals recited in its opinion (A. 106):

> "The case of United Mine Workers of America v. Meadow Creek Coal Co., 263 F. 2d 52 (C. A. 6, 1959), cert. denied 359 U. S. 1013 (1959), supports the jurisdiction of the District Court to consider and determine the common law claim where it is joined with the federal claim and is supported by the same evidence. Hurn v. Oursler, 289 U. S. 238 (1933). We are asked to reconsider our decision in Meadow Creek. We feel this case was correctly decided.' Judge Martin in his opinion said:
>
> '. . . We think this case presents only a single cause of action; that the claim of secondary boycott and unlawful conspiracy are not separate causes of action, but merely different grounds to support a single cause of action.'
>
> "The fact that the activities of U. M. W. were directed against both primary and secondary employers and employees does not oust the court of jurisdiction. The acts of the Unions were so interrelated that except in a very few instances it would be virtually impossible to separate those directed against a primary as distinguished from a secondary party."

B. The Violation of Federal Statute Was Not Unimportant in This Case; the Meadow Creek Case Did Not Create Important Litigation Burdens for Petitioners; Petitioners Have Had Litigation Problems as Long as Their History Has Been One of Violence.—

The petitioners say that the Meadow Creek decision was wrong. At this point the petitioners go off the record and they refer to twenty-five cases which have been brought against petitioners in the years 1959 and 1960. Respondent and its attorneys are not advised as to these cases and

have no connection with them. We cannot see how the fact that petitioners have seriously wronged so many other people can be of assistance to the petitioners in this case. Rather, these circumstances, if true, only serve to emphasize the horrible practices carried on by the petitioners — the massive gangs of men who seek to impose the will of the petitioners on men with which the members of these gangs have no connections and which terrorize whole areas making it necessary, as in the case at bar, for local communities to beg for help from state officials (Findings of the District Court 52 and 55). In the case at bar the State Police of two states were unable to cope with the situation (Finding of the District Court 59).

Petitioners state (Petition page 24) that "Practical considerations demonstrate that under the doctrine followed in the instant case, Section 303 is not important in a substantive way. However, it has effectively become a procedural device for entry into Federal Court". This statement is not borne out by the record. The District Court's Finding of Facts 48, 56, 57, 58, 59, 60, 61, 62, 64, 70, 76, 105, 106, 110 and 111 clearly show to the contrary that here the secondary employee truck drivers bore the major part of petitioners' attack. The trucks were vulnerable to attack, and this circumstance was seized upon by petitioners in their effort to stop the shipments of coal by respondent. Whether or not the same is true in the twenty-five extraneous cases listed by petitioners we are not fully advised.

Since the petitioners have gone off the record with respect to these extraneous law-suits we feel compelled, in answer to these assertions, likewise, to go off the record in the next three paragraphs, which need be considered only if the extraneous matters referred to by petitioners are considered appropriate.

We point out that the cases referred to were brought in 1959 and 1960 as a result of the campaign of the Union

to impose the last amendment to the National Bituminous Coal Wage Agreement—the one with the clause which expressly called for a boycotting of non-union coal. Our investigation reveals that violations of the National Labor Relations Act played an important part in the 1959-1960 strife, just as they did in the case at bar. Upon charges filed by many coal operators in eastern Kentucky and Tennessee, the National Labor Relations Board, after extensive investigation, issued a complaint against the United Mine Workers of America and its District 19 charging them with various forms of violence and coercive activities. In due course and pursuant to a petition filed in the United States Court of Appeals for the Sixth Circuit under Section 10 (e) of N. L. R. A., an order was entered requiring the union to cease and desist from various unfair labor practices characterized by violence. The National Labor Relations Board also used its extraordinary power, upon the petition of the Regional Director of its Tenth (Atlanta) Region, to obtain under Section 10 (j) a restraining order, entered April 30, 1959, in the United States District Court for the Eastern District of Kentucky enjoining the United Mine Workers of America from, among other things, "mass picketing, blocking roads or other installations, assaulting, stoning, clubbing, overturning or threatening to overturn equipment, threatening physical violence or other injury, using coercive or intimidatory language" (Rains v. United Mine Workers of America et al., Civil No. London 985). Several of the United Mine Workers of America officials and representatives were later before the District Court on criminal contempt charges. A similar restraining order was also issued upon the petition of the Regional Director of the Ninth (Cincinnati) Region, enjoining, in addition to acts of violence, secondary boycott activities prohibited by Section 8 (b) (4) (A) and (4) (B) of the N. L. R. A. (Getreu v. UMWA et al., Civil No. Jackson 280). This period of violence arose after the decision

in the Court of Appeals in the Meadow Creek case, and it continued on after this Court denied certiorari in the Meadow Creek case. Regardless of the Meadow Creek decision, this Union will have lawsuits as long as it resorts to violence or other law violations.

The foregoing is apparent from the history of this Union. The Report of the Legal Department, United Mine Workers of America, to the Union's convention of 1952 is set forth on pages 25-254 of the printed minutes of that convention, and this report states in part:

> "Since the 1948 Convention, your Legal Department has handled hundreds of cases of various types and kinds arising under the Taft-Hartley Act, and has been successful in defeating many of these actions brought against the Union and its members. In many instances the Operators have been forced to dismiss many of their cases, and in some instances some cases have been disposed of by compromise and settlement agreements.
>
> "During the negotiations of the 1948 and 1950 National Agreements, the union forced the Operators to dismiss injunction and damage actions pending in the Federal and state courts with potential liabilities of approximately $16,000,000. During 1951 and 1952 the Operators brought in their own names or encouraged others to bring damage actions with a potential liability of approximately $43,000,000."

The Legal Department reported to the 1956 convention, in part, as follows:

> "Since the last convention, 32 cases have been filed under the provisions of the Taft-Hartley Act against your International Union seeking damages in the total amount of $21,786,484.02. Twenty-six cases have been disposed of by trial, settlement and dismissal. Six

cases are now pending, seeking damages in the amount of $10,303,017.00."

(1956 Convention Minutes, page 269.)

"Since the last report to you four years ago the fight to maintain the legal rights of our organization and to protect its members has been an ever continuing one. No district of our union has escaped the scourge or effects of the Taft-Hartley Act. Employers have utilized its provisions to prosecute in the criminal courts, as a basis for injunctions by courts of equity in labor disputes, and to sue for damages in tremendous amounts. Defending our organization and its members from those onslaughts has involved tremendous expense including attorneys' fees, court costs, expense of trials and other items necessary to preparation and defense in court. These expenses have risen to unusually large proportions. There is every reason to believe by past experience that only repeal of the Taft-Hartley Act can bring substantial relief from the flood of pending and anticipated litigations and attendant enormously increased costs involved. Despite these tremendous legal problems your Legal Department feels that under the leadership of President Lewis and his associate International Officers **your union is stronger today than at any time in its history.**" (Emphasis ours.)

(1956 Convention Minutes, pages 272-273.)

It would seem that this Union thrives on litigation and the reason is apparent from the record in this case.

The broad scope of the wrongs done by these petitioners should not save them from the application of the ordinary rules of law to which more law abiding citizens are subject.

C. The Patton [211 F. (2) 742], Apex (310 U. S. 469) and Crumboch (325 U. S. 821) Decisions Are Distinguishable.—

In final analysis, the position of the petitioners is that the case of Hurn v. Oursler, 289 U. S. 238 (1933) and the doctrine of pendent or ancillary jurisdiction must be ignored. They point to United Mine Workers of America v. Patton, 211 Fed. 2d 742 (Fourth Cir. 1954) and Apex Hosiery Company v. Leader, 310 U. S. 469 (1940) and Hunt v. Crumboch, 325 U. S. 821 (1945), and state that these decisions are in conflict with the rule in the Meadow Creek case.

Congress has never manifested an intent that the ordinary rule of pendent or ancillary jurisdiction shall not apply to the cause of action afforded by Section 303 of the Taft-Hartley Act, **when that doctrine is properly asserted in the pleadings in the cause and there is a sufficiently strong federal case to fit the rule.**

In the Apex and Crumboch cases the doctrine of Hurn v. Oursler on pendent or ancillary jurisdiction was never asserted by the plaintiff. Furthermore, the facts presented in the complaints did not present even colorable federal claims, an essential element to the application of the doctrine of pendent jurisdiction. In this respect, the decisions in Apex and Crumboch are like the decision in the case of Love and Amos, which was decided concurrently with the case at bar by the Court of Appeals, wherein the Court of Appeals held that the claim of the sales agency for damages resulting from the destruction of the business of respondent was not a proper claim to assert under the Federal Statute prohibiting secondary boycott and, accordingly, there was no colorable federal cause of action and the Court of Appeals dismissed that case (A. 116). In the Apex and Crumboch cases the same decision would have

been reached even if the doctrine of pendent jurisdiction had been asserted by the plaintiff.

In the Patton case the Court of Appeals did not once refer to the doctrine of pendent jurisdiction or the case of Hurn v. Oursler. The wrongs done were completely encompassed in the remedy afforded by the Federal Statute.

The facts in the case at bar as found by the District Court demonstrate that petitioners ran roughshod over federal law and state law with equal abandon, leaving behind wreckage which they now seek to have the Court microscopically to sift to determine that portion attributable to violation of state law and that attributable to federal law. The District Court found that this would be an impossible task (Finding 110). Is there no relief, then, under the Federal Statute the violation of which has been so thoroughly demonstrated in this case? The law is settled. The party wronged, on asserting pendent jurisdiction in a colorable federal claim, is entitled to full relief and if that party cannot obtain the full relief under the Federal Statute, he is entitled to recover under the state law founded upon the same cause of action as the federal remedy.

D. The Meadow Creek Case Is Supported by a Long Line of Cases Following Hurn v. Oursler (289 U. S. 238).

The Meadow Creek decision was preceded by a long line of cases. These cases had their origin in Siler v. L. & N. Ry. Co., 213 U. S. 175 (1909) and Hurn v. Oursler, 289 U. S. 238 (1933).

The doctrine has been applied in cases involving a claim in the field of federal patent or trademark law with an accompanying state unfair competition claim in such cases as Hurn v. Oursler, supra; Armstrong Paint and Varnish Works v. Nu-Enamel Corp., 305 U. S. 315 (1939);

in re Amtorg Trading Corp., 75 Fed. 2d 826 (Ct. of Patent Appe., 1935); Edelman & Co. v. AAA Specialty Company, 88 Fed. 2d 852 (7th Cir., 1937); Sinko v. Snow Craggs Corporation, 105 Fed. 2d 450 (7th Cir., 1939); Maternality Yours v. Your Maternity Shop, 234 Fed. 2d 538 (2nd Cir., 1956).

The doctrine has been applied under the Jones Act wherein claims are combined for unseaworthiness and maintenance and cure with an admiralty claim in such cases as Jordine v. Walling, 185 Fed. 2d 662 (3rd Cir., 1950); Troupe v. Transit Company, 234 Fed. 2d 253 (2nd Cir., 1956); Doucette v. Vincent, 194 Fed. 2d 834 (1st Cir., 1952).

The doctrine has been applied in cases wherein claims under the Federal Transportation Acts are combined with claims under the state or common law in such cases as Southern Pacific Company v. Van Hoosar, 72 Fed. 2d 903 (9th Cir. 1934); Strachman v. Palmer, 177 Fed. 2d. 427 (1st Cir., 1949); Chicago Great Western Railway Co. v. Chicago, Burlington and Quincy Railway Co., 193 Fed. 2d 975 (8th Cir., 1952).

The doctrine has been applied in cases wherein a claim under the Federal Securities and Exchange Act is combined with a state or common law claim for fraud in such cases as Errion v. Connell, 236 Fed. 2d 447 (9th Cir., 1956); Jung v. K. & D. Mining Co., 260 Fed. 2d 697 (7th Cir., 1958).

The doctrine has been applied in cases wherein claims under the Sherman and Clayton Acts are combined with claims under the state law or common law dealing with monopoly or trusts in such cases as Southside Theatres v. United West Coast Theatres Corporation, 178 Fed. 2d 648 (9th Cir., 1949); Braddick v. Federation of Shorthand Reporters, 115 Fed. Supp. 550 (S. D. N. Y., 1953).

The doctrine has been applied in cases wherein claims under the Fair Labor Standards Act are combined with

claims for compensation outside of said acts in such cases as Manosky v. Bethlehem Hingham Shipyard, 177 Fed. 2d 529 (1st Cir., 1949); Hogue v. National Automatic Parts Association, 87 Fed. Supp. 816 (E. D. Mich., 1949); Wertanen et al. v. Weldnetion Corporation, 151 Fed. Supp. 440 (E. D. Mich., 1957).

The doctrine has been applied in cases wherein claims under statutes relating to national banks are combined with claims under the state or common law in such cases as Gulley v. First National Bank of Meridian, 81 Fed. 2d 502 (5th Cir., 1936).

The doctrine has been applied in cases wherein a claim complying with the diversity of citizenship and jurisdictional amount requirements is combined with a claim which does not comply with such requirements in such cases as American Fidelity & Casualty Company v. Owensboro Milling Company, 222 Fed. 2d 102 (6th Cir., 1955).

The foregoing cases, in these many different areas, discuss the doctrine of pendent jurisdiction as a rule of justice, convenience, common sense, economy and practicality. As an example, in Errion v. Connell, 236 Fed. 2d 447, the Court stated:

> "It is alleged in the complaint in our case, and the trial Court found, a single case of action involving a single fraudulent scheme to defraud Mrs. Connell of her property. There were involved two types of property, one being securities over which the Federal Court had jurisdiction, and the other non-securities over which the Federal Court normally has no jurisdiction. But the single fraudulent scheme arising out of the same set of facts encompassed both types of property. The thought of requiring two lawsuits in this situation is untenable. We, therefore, hold that the trial court could correctly award damages for the entire fraudu-

lent scheme, even though non-securities were involved."

The Taft-Hartley Act has afforded a remedy in the Federal Court for the damages done by an illegal secondary boycott. Where the defendant has wantonly and recklessly violated the rights of the plaintiff under this Federal Statute, as well as under the common law, in such a manner that it is impossible to segregate the damages from the two types of violations and give relief under the Federal Statute, as is true under the Findings of the District Court in this case, we submit that such is the clearest case requiring the application of the doctrine of pendent jurisdiction, the rule of justice, convenience, common sense, economy and practicality. Any other rule would put a premium upon, and encourage, the kind of conduct which the Court of Appeals had characterized as a "frightening picture of violence and intimidation."

III. Petitioners Are Responsible for All of the Acts of Intimidation and Coercion in the Record.

A. The International Union's Responsibility for the Acts of the District Union's Representatives Is Not Questioned.

In the third question raised in the petition, petitioners question the liability of petitioners for certain activities which occurred in the period of the case.

In the Court of Appeals the petitioners raised the question as to the responsibility of the International Union for the Acts of District 19. A large part of the proof in the trial of the case related to the relationship of District 19 to the International Union and the Court made findings with respect to this relationship in Finding No. 97. The Court found that the District was merely an arm of the International and was not a separate autonomous body, but

was completely subservient to the International; that District's independence was terminated in order that the International gain greater control over the District organizers. The Court further found that the International was carrying on a campaign at the International level that was in part directly responsible for the violence in the vicinity of respondent's operations (Findings 99 and 100). The District Court found that the organizers of District 19 working in the vicinity of respondent's operations were furthering the organizational efforts and interests of the International Union in Findings 94 and 95. The petitioners do not challenge these findings in the petition before this Court.

B. The Entire Record Shows a Pattern of Violence, Intimidation and Coercion Stirred Up by District Union Representatives as Well as by the International Itself.

Many of the other findings of the District Court show the relationship of the organizers of the Union to the many violent acts and threats of violence that occurred. The petitioners do not challenge all of these findings, but only pick out a small part of them and state that the representatives of the Union were not shown to be involved in these specific acts.

The same approach was made in the appeal by the petitioners in the Court of Appeals under question number 6 raised in that Court. The approach is to challenge only the connection of the Union to a few isolated incidents, taking the specific findings with respect to these incidents out of the context of the District Court's over-all findings.

This is an unrealistic and misleading approach. Only the entire record reveals a pattern of operation and many of the activities not mentioned by the petitioners show the relationship of the union organizers and union officers to the whole scheme of atrocities.

This can be well demonstrated by looking to the findings of the District Court. Finding of Fact 95 is to the effect that the organizers Daniel and Maddox were engaged in the organizational interests and objectives of the International Union and that in accomplishing these objectives the organizers frequently resorted to the use of caravans of cars containing the gangs such as those which manifested themselves so many times in the vicinity of respondent's operations. The organizer Clouts showed that it was a customary practice of the organizers of this union to bring these gangs of men to the mines upon which pressure was to be brought to bear (R. III 1311).

The witness Thomason, President of District 19, testified that these organizers were not specifically told what to do, that they were competent men, that they knew what to do, and it was not necessary to talk to these organizers and detail their activities (R. III 1323).

There can be no doubt that the officers and organizers of District 19 were constantly at hand and were in the thick of the activities which destroyed the respondent. At the very outset, in the mob which took over the premises of respondent's tipple in July, 1954, the two district field representatives were at hand to speak for the mob, and the Court found that they did nothing to disperse the mob, but rather that they made remarks calculated to arouse the fury of the men. The District Court's Finding of Fact shows how closely related to this incident were the incidents involving the issuance of bogus warrants for the arrest of the truck drivers, and that the accuser who swore to these warrants stated on the witness stand that the Deputy Sheriff, the Union Member involved in the mob of July, 1954, and who was made a defendant in the injunction case after the mob, was the one who procured the swearing out of the warrants. The Court found that there was no justification for this misuse of

the processes of the law. These warrants were addressed against those truck drivers who sought the protection of the injunction after the immediately preceding mob action led by the field representatives of the Union. The gangs of men which filled the streets around the tipple at respondent's premises were visited constantly by these field representatives. The responsibility of the organizers of the Union for the mob which descended on the City of Jellico and took over completely that city on April 7, 1955, administering beatings to truck drivers and other humiliations, and dumped coal over the streets of Jellico, is shown by the conferences which the District representatives had with the members of this mob. This was the same mob which proceeded from the tipple to two other mines and caused beatings to be administered to a number of men, including a severe thrashing to a man sixty five (65) years of age. The field representative of the Union was seen talking to the members of this mob and, in fact, preceded them back into Jellico at the conclusion of the day's activities. This agent's attempt at a weak alibi at the trial was disproved by a disinterested witness. One of the mines in which the beatings occurred sent for the field representative and asked to sign up with the Union and thereafter this mine was not molested. Theretofore the field representative had been to that mine to obtain a contract but was refused.

The mob of April 11, 1959, first visited the Phillips mine and closed it down and the District Secretary and Treasurer and the field representative of the District told Phillips it was because his men had not joined the Union and if they did join he would not have any more trouble. The men did then join and the mine reopened. This same mob proceeded to the Van Huss mine and committed some of the worst atrocities in this record.

The connection between the Union and the other gangs of men which paraded through Jellico and sought to ter-

rorize the municipal officials who had protested against the mob activities was shown by the testimony of a member of that crew.

The district officers and members held a meeting in Jellico and the district officers urged the members of the Union to keep the coal out of Jellico and stated if the men got into trouble the Union would be behind them. A criminal case was later brought against some of the members because of mob depredations and $10,000.00 of the International Union's funds were sent to the District as "organizing expenses" just before the District paid $10,000.00 as attorneys' fees to the lawyers who represented the members of the mob in the criminal case.

The connection of the Union representatives with efforts to harrass the truck drivers at the service station where they kept their trucks, by caravans of cars and by gangs on the sidewalk, is shown by the presence of the District organizers giving instructions to these men before the start of the demonstration and the supervision of the representatives as the demonstration was taking place.

In January, 1956, the District Secretary-Treasurer gleefully took credit for the Union for the fact that the respondent had been driven from Jellico.

After the respondent had been driven from the property a new company came in and took over the coal land and the respondent's tipple and the Union secured a contract from this new company which gave the International Union the benefits for which it had so determinedly worked. All the while the International's organizing campaign, supervised by the International's organizing committee, was going on and the International Union in its official journal was publishing tirades against such suppliers of T. V. A. coal as the respondent.

The traditional practices of the Union in stirring up gangs and caravans of cars to descend upon the mines is

still being carried on is revealed by the twenty-five cases recently brought in 1959-1960 to which petitioners refer under the second question in this petition.

In its Conclusion of Law Number 3, the Court found that the organizers of the Union were agents of the defendant International acting within the scope of their employment and in accordance with customs and practices within the Union.

In the light of the specific instructions given by District officers and agents, the organizing campaign going on under the International Campaign Committee, the tirades directed at such suppliers of coal as respondent in the official journal of the International, the use of the customary practices of the Union, in engaging gangs and mobs, and the benefits secured by reason of the mob activities in the form of new members and new contracts signifying the ratification of the conduct of the mobs, it is submitted that the rules set forth in United Brotherhood of Carpenters and Joiners of America v. U. S., 330 U. S. 395 (1947); U. M. W. v. Meadow Creek Coal Company, Inc., 263 Fed. 2d 52 (1959), cert. denied 359 U. S. 1013 (1959); U. M. W. v. Patton, 211 Fed. 2d 742 (4th Cir. 1954), and Clayeraft v. U. M. W., 204 Fed. 2d 600 (6th Cir. 1953), render the decision of the District Court and the Court of Appeals clearly correct with respect to this issue.

CONCLUSION.

This case took over three weeks to try in the District Court. The printed transcript of testimony comprises over 1,760 pages. The District Court adopted 124 findings of fact and 14 conclusions of law. The thoroughness of the District Court's consideration in this case is revealed in its findings and conclusion. The Court of Appeals has given thorough consideration to the questions raised in this petition. There is close similarity between this case

and the case of United Mine Workers of America v. Meadow Creek Coal Company, supra, as to which this Court denied certiorari in June, 1959. The justness of the decision of the District Court and the Court of Appeals is manifest from the record. The decision of the Court of Appeals is not in conflict with any case from other circuits, but is entirely consistent with the decisions referred to by the petitioners, and the application of the doctrine of pendent jurisdiction in this case is called for by the rule of reason, economy, common sense, convenience and justice. The fact that the Union has continued its outrages and has gotten itself involved in other lawsuits is no justification for depriving the respondent of its rights under sound principles of law. The Union's other involvements are of no concern here. The only question is whether any valid reason has been presented requiring the granting of the writ. There is none, and accordingly, respondent prays that the petition for writ of certiorari be denied.

Respectfully submitted,

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